THE HON'BLE Smt. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION No. 27960 OF 2007

O R D E R: **(Per THE HON'BLE Smt. JUSTICE T.MEENA KUMARI)**

This writ petition is filed seeking to declare the impugned order dated 20.11.2007 passed by the 1st respondent in CCT's Ref.LIII (1)/744/07 for the tax period May, 2005 as illegal and arbitrary.

The case of the petitioner is that the petitioner is a registered VAT dealer on the rolls of 3rd respondent and engaged in the business of Milling of Rice. The petitioner purchased rice from VAT registered dealers during the period May, 2007 and claimed input tax credit on the ground that under Section 13 of the AP VAT Act, 2005 the dealer is entitled for input tax credit in respect of the goods purchased from local VAT registered dealers. However, the 3rd respondent issued show-cause notice proposing to disallow the input tax credit claimed by the petitioner on the ground that the selling VAT dealer is fictitious dealer and though the petitioner stated that the consignments are accompanied by tax invoices and the selling dealer is a VAT registered dealer, the 3rd respondent passed

an order dated 28.9.2005 disallowing the input tax credit claimed by the petitioner and also penalty of Rs.1,61,026-00. Aggrieved by the said order, the petitioner preferred an appeal before the 2nd respondent, but the 2nd respondent vide order dated 8.6.2007 confirmed the order dated 28.9.2005 passed by the 3rd respondent. Aggrieved by the same, the petitioner preferred an appeal before the Tribunal and as the Tribunal has no power to grant stay, the petitioner filed a stay petition before the 1st respondent for stay of collection of disputed tax pending disposal of the appeal by the Tribunal. The grievance of the petitioner is that the 1st respondent without appreciating the detailed grounds raised by the petitioner in support of the contention that the input tax credit was rightly taken in respect of the goods purchased from local VAT registered dealers basing on the tax invoices issued by the said dealers, passed the order dated 20.11.2007 rejecting the stay petition filed by the petitioner for stay of collection of the disputed tax pending disposal of the appeal by the Tribunal. Hence, this writ petition.

Heard the learned counsel for the petitioner and the learned Special Standing Counsel for the respondents.

The controversy is that pending an appeal, application for stay was dismissed by the Competent Authority. We have gone through the record. We feel that the interest of justice would have been met if stay was granted pending appeal, subject to deposit of 1/4th of the liability. Therefore, we set aside the impugned order and direct that 1/4th of the penalty and interest shall be paid by the petitioner within a period of eight weeks from the date of receipt of a copy of this order. For such period, there shall be an unconditional stay and stay shall continue till disposal of the appeal, provided the amount is deposited within the stipulated time. The deposit of amount shall be without prejudice to the rights of the petitioner in appeal. If any amount has already been paid by the petitioner, the same shall be given credit.

The writ petition is accordingly disposed of. No costs.

T.MEENA KUMARI, J.

G.ROHINI, J.

December 27, 2007

Note:
C.C. in four days.
(BO)
MVB